

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

J&J SPORTS PRODUCTIONS, INC.,)	Case No. 10-5136 SC
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
)	<u>MOTION TO STRIKE</u>
v.)	
)	
AJAY WALIA and RAKESH KUMAR)	
SONDHI, A/K/A RAKESH K. SONDHI,)	
individually and d/b/a PIZZA AND)	
PIPES; and INDIA HOUSE LLC, an)	
unknown business entity d/b/a)	
PIZZA AND PIPES,)	
)	
Defendants.)	
)	

I. INTRODUCTION

This matter comes before the Court on the Motion to Strike Defendant's Affirmative Defenses brought by Plaintiff J & J Sports Productions, Inc. ("Plaintiff") against Defendant India House LLC ("India House"). ECF No. 10 ("MTS."). The Motion is fully briefed. ECF Nos. 15 ("Opp'n"), 18 ("Reply"). Pursuant to Civil Local Rule 7-1(b), the Court finds the Motion suitable for determination without oral argument. For the following reasons, the Court GRANTS Plaintiff's Motion.

II. BACKGROUND

Plaintiff owns exclusive nationwide television rights to

1 "'Firepower': Manny Pacquiao v. Miguel Cotto, WBO Welterweight," a
2 November 14, 2009 closed-circuit telecast of boxing matches and
3 commentary ("the program"). ECF No. 1 ("Compl.") ¶ 11. On
4 November 12, 2010, Plaintiff filed this action alleging that
5 Defendants Ajay Walia ("Walia"), Rakesh K. Sondhi ("Sondhi"), and
6 India House, d/b/a Pizza and Pipes restaurant, unlawfully
7 intercepted and displayed the program at Pizza and Pipes in Redwood
8 City, California. See id. Defendant India House owns Pizza and
9 Pipes, and Defendants Sondhi and Walia are shareholders in India
10 House. See ECF No. 20 ("Mar. 14, 2011 Order").

11 On December 27, 2010, Defendants Walia and Sondhi filed a
12 Motion to Dismiss, and Defendant India House filed an Answer
13 denying Plaintiff's allegations, setting forth nine affirmative
14 defenses, and expressly reserving the right to assert additional
15 affirmative defenses based on information learned during discovery.
16 ECF Nos. 8 ("Answer"), 9 ("MTD"). On March 14, 2011, this Court
17 dismissed Plaintiff's claims against individual defendants Sondhi
18 and Walia with leave to amend. See Mar. 14, 2011 Order. Plaintiff
19 now moves to strike all of India House's affirmative defenses, and
20 its reservation of the right to assert additional affirmative
21 defenses, pursuant to Federal Rule of Civil Procedure 12(f).
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23 **III. LEGAL STANDARD**

24 Rule 12(f) provides that "[t]he court may strike from a
25 pleading an insufficient defense or any redundant, immaterial,
26 impertinent, or scandalous matter." Fed. R. Civ. P. 12(f).
27 Motions to strike are generally regarded with disfavor. Ganley v.
28 County of San Mateo, No. 06-3923, 2007 WL 902551, *1 (N.D. Cal.

1 Mar. 22, 2007). The essential function of a Rule 12(f) motion is
2 to "avoid the expenditure of time and money that must arise from
3 litigating spurious issues by dispensing with those issues prior to
4 trial." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir.
5 1993), rev'd on other grounds, 510 U.S. 517 (1994).

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7 **IV. DISCUSSION**

8 Plaintiff argues that all of India House's affirmative
9 defenses and its reservation of the right to add additional
10 defenses should be stricken on various grounds. MTS at 4-11.
11 India House does not oppose the Motion with regard to eight of the
12 nine affirmative defenses and the reservation. Opp'n at 3.
13 Rather, it notes that it filed a First Amended Answer, ECF No. 14
14 ("FAA"), on Feb. 3, 2011, which eliminated eight of the nine
15 affirmative defenses and the reservation and added additional facts
16 to the sole affirmative defense remaining. Id. Plaintiff contends
17 that the FAA was not properly filed under the Federal Rules of
18 Civil Procedure. Reply at 2. India House asserts that it filed
19 the FAA "as a matter of course under Federal Rule of Civil
20 Procedure 15(b)." Opp'n at 2.

21 Rule 15(b) pertains to amendment of pleadings during and after
22 trial and does not apply here. The Court surmises Defendants meant
23 Rule 15(a)(1)(B). Rule 15(a)(1) states:

24 A party may amend its pleading once as a matter
25 of course within: (A) 21 days after serving it,
26 or (B) if the pleading is one to which a
27 responsive pleading is required, 21 days after
service of a responsive pleading or 21 days after
service of a motion under Rule 12(b), (e), or
(f), whichever is earlier.

28 Fed. R. Civ. P. 15(a)(1) (emphasis added). "In all other cases, a

1 party may amend its pleading only with the opposing party's written
2 consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Here,
3 Plaintiff rightly notes that India House may not rely on Rule
4 15(a)(1)(A) because it did not file the FAA within 21 days of
5 serving the original Answer, and it may not rely on Rule
6 15(a)(1)(B) because an answer is not a pleading to which a
7 responsive pleading is required. See Fed. R. Civ. P. 7(a)(7)
8 (response to an answer not permitted unless ordered by the court).
9 Therefore, India House was not permitted to file its FAA "as a
10 matter of course"; rather, under Rule 15(a)(2), it was required to
11 obtain Plaintiff's written consent or the Court's leave before
12 filing the FAA. As it did not do so, the FAA is not properly
13 before the Court, and the original Answer is treated as the
14 operative pleading for the remainder of this Order.¹

15 India House does not oppose Plaintiff's Motion with regard to
16 affirmative defenses (1)-(3) or (5)-(9), or with regard to the
17 express reservation of the right to assert future affirmative
18 defenses. Opp'n at 3. Accordingly, the Court GRANTS Plaintiff's
19 Motion to Strike these portions of the Answer.

20 All that remains for the Court to address is India House's
21 fourth affirmative defense labeled "actions of others." Answer ¶
22 43. In its fourth affirmative defense, India House states: "India
23 House is not liable for the acts of others over whom it has no
24 control. There is no agency between India House and the
25 perpetrators of the alleged wrongful conduct." Id. Plaintiff
26 argues that this assertion is not an affirmative defense but rather
27 a denial of an element of Plaintiff's cause of action. MTS at 8.

28 ¹ India House asks the Court to retroactively grant leave to file
the FAA. The Court declines to do so.

1 The Court agrees. "Affirmative defenses plead matters extraneous
2 to the plaintiff's prima facie case, which deny plaintiff's right
3 to recover, even if the allegations of the complaint are true."
4 Federal Deposit Ins. Corp. v. Main Hurdman, 655 F.Supp. 259, 262
5 (E.D. Cal. 1987) (citing Gomez v. Toledo, 446 U.S. 635, 640-41
6 (1980)). By contrast, "denials of the allegations in the complaint
7 or allegations that the Plaintiff cannot prove the elements of his
8 claims are not affirmative defenses." G & G Closed Circuit Events,
9 LLC v. Nguyen, No. 10-cv-00168, 2010 WL 3749284, *5 (N.D. Cal.
10 Sept. 23, 2010). Here, Plaintiff alleges in the Complaint that
11 each and every Defendant and/or their agents unlawfully intercepted
12 and displayed the program. Compl. ¶ 14. Thus, India House's
13 assertion that the perpetrators of the alleged wrongful conduct
14 were not its agents is a direct denial of the allegations in the
15 Complaint; it does not deny Plaintiff's right to recover if the
16 allegations in the Complaint are true. Accordingly, the Court
17 grants the Motion to Strike India House's fourth affirmative
18 defense because it is not actually an affirmative defense. This
19 ruling does not preclude India House from asserting this claim as
20 an ordinary defense to liability.

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1 **V. CONCLUSION**

2 For the foregoing reasons, the Court GRANTS the Motion to
3 Strike filed by Plaintiff J & J Sports Productions, Inc. against
4 Defendant India House LLC. The Case Management Conference set for
5 April 29, 2011 remains as scheduled.

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7 IT IS SO ORDERED.

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9 Dated: March 28, 2011

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11 UNITED STATES DISTRICT JUDGE
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